

ONLINE GAMBLING IN EUROPE

THE EUROPEAN PARLIAMENT REPORT

Bahar Alaeddini, Solicitor at Harris Hagan, reports on the European Parliament's 'Resolution on Online Gambling in the Internal Market' published in September.

The European Commission (the Commission) is not known for speedy action, and its gradually evolving position in relation to online gambling – an industry predicted to be worth €13 billion in Europe in 2015 – is no exception. In November 2012, the Commission unveiled its 'Action Plan' for online gambling in Europe containing a comprehensive set of initiatives over two years, targeted at clarifying the regulation of online gambling and promoting cooperation between Member States. At the time, it seemed that Europe was at a critical crossroad, but one year later, little progress has been made, and at the time of writing, no infringement proceedings have been launched. Infringement proceedings are expected to be launched in the next few months or so, but this is likely to be followed by further glacial progress

What has actually happened?

On September 10, 2013, a vote took place in the European Parliament (the Parliament) in relation to a report on online gambling in the internal market. The report was adopted with an overwhelming majority of 572 to 79. The original report, which was introduced in February 2013 by MEP Ashley Fox (who represents the South West of England and Gibraltar constituency), urged the Commission to take action regarding the regulation of online gambling. The tone and wording of the original report changed significantly during the six months of debate, which is no surprise given that it received a total of 425 amendments across Europe earlier this year.

Section 1: Specific nature of the online gambling sector and consumer protection

The first section of the report serves as an introduction to the online gambling industry. It opens by stating that Member States must ensure a high level of consumer protection to diminish the social costs and harmful effects of online gambling. The section goes on to warn that gambling can lead to dangerous addiction and that there is a "dangerous link" between severe economic hardship and high levels of gambling, particularly in the present harsh social and economic climate. In the report, Parliament recommends the close, on-going monitoring of levels of gambling addiction and problem gambling.

This section goes on to invite the Commission and Member States to take action against illegal gambling offered from within Member State territories, urging the Commission to demand that Member States take enforcement measures against illegal operators. It also invites the Commission to study what can be done to stop practices whereby operators based in one Member State market online gambling in another Member State in which they are not licensed.

In cooperation with Member States, the Commission is asked to explore the possibility of EU-wide interoperability with national self-exclusion registers that are accessible to national authorities and licensed operators, as well as the implementation of compulsory third-party identification controls to exclude minors or persons using fake identities, and support for self-regulation initiatives. Parliament also recommends in this section:

- A clear distinction to be made between gambling activities and other forms of online entertainment. Services that combine distinguishing features of the gambling sector should fall under appropriate gambling legislation and fully respect age

and identity verification mechanisms.

- An EU-wide self-exclusion database.
- The introduction of uniform, pan-European common security standards for electronic identification and cross-border e-verification systems.
- The sharing of best practices on matters such as protecting the vulnerable, preventing multiple accounts, promoting effective enforcement measures and protecting consumers against illegal operators.
- Socially responsible advertising, encouraged by Member States and operators.

Section 2: Compliance with EU law

The second section of the report stresses the importance of EU law compliance and the basic EU Treaty principles of proportionality, consistency, transparency and non-discrimination. Most welcome of all is that the resolution calls on the Commission to launch infringement proceedings against those Member States that appear to breach EU law – a point revisited later in this article. The Commission and Member States are asked to draw up coordinated measures and strategies, including exchanges of best practice, with the assistance of the expert group, into the problem of tax avoidance by authorised operators who provide services in the EU, but have their registered offices in tax havens or outside the EU. Also, Member States choosing to open up their online gambling market are encouraged to provide transparent and legally certain application procedures based on objective and non-discriminatory criteria.

Section 3: Administrative cooperation

The third section of the report calls on the expert group to share best practices on a number of different matters including enforcement measures against illegal operators, match-fixing, responsible advertising, protection of consumers, self-

exclusion mechanisms and technical standards for gaming equipment. This section also calls on the Commission to:

- Include experts specialised in problem and pathological gambling in expert groups and consultations.
- Collaborate with all stakeholders, including the gambling industry and consumer organisations.
- Simplify procedures to remove administrative burdens on Member States that could unnecessarily increase costs for legal online operators in countries that choose to open up their markets.

Section 4: Money laundering

The fourth section of the report acknowledges that online gambling is a non-cash-based industry that is dependant on third-party financial service providers. It emphasises the need for close cooperation between regulatory authorities, police and enforcement agencies in preventing criminal activity. The Parliament also notes its supports of the proposal to extend the anti-money laundering provisions to include all forms of gambling, as set out in the fourth Anti-Money Laundering Directive.

Section 5: Integrity of sports

The fifth and final section of the report deals with sports integrity and match-fixing. The Parliament requests that Member States ban in-play betting stating that, “these have proved to be very vulnerable to match-fixing and therefore pose a risk to the integrity of sport”. Unsurprisingly, this recommendation has been criticised by many in the industry given the lack of evidence to prove that in-play betting increases the risk of match-fixing. In a recent press release, the Remote Gambling Association stated that “it is fundamentally wrong to imply that the licensed betting industry presents the threat.” The RGA indicated that the betting industry was working closely with various national and international organisations to “identify and combat the real causes for concern”. This section also calls for a general ban on all staff involved in sporting events, “who may have a direct influence on the result”, from placing bets on their own matches or events.

What does the report achieve?

The report provides guidance on the possibilities that lie ahead for gambling regulation in Europe; however, it is important to note that the report has no binding effect and the recommendations are only intended to influence policy at an EU level.

The report, as adopted, contains many concessions from the original version published by Fox. When commenting of the final report, Fox stated that he believed it did not go far enough in achieving a single market and mistakenly stresses the importance of the principle of subsidiarity. Fox believed that the original draft of his report better reflected his vision for EU gambling policy. This was, of course, before his MEP colleagues in the two opposition parties, the European People's Party and the Socialists and Democrats Party, tinkered with it. It comes as no surprise that MEPs from Member States with state monopolies were very keen to soften the tone of Fox's original report.

After Parliament's vote, Phill Brear, Gibraltar's Gambling Commissioner, described the final report as “an over-politicised and over-protectionist wish list with hard evidence and experience being ignored”. He added that “the Internet is here to stay and so is Internet-based gambling, so either a workable compromise will have to be found or the operating principles will have to be revisited by the ECJ.”

Infringement proceedings

The spotlight is now firmly on Michel Barnier, the Internal Market and Services EU Commissioner, to take action against non-compliant Member States by launching infringement proceedings. Infringement proceedings are still outstanding against several Member States including the Czech Republic, Greece, and Slovakia. At the press conference announcing the launch of the Action Plan last year, Barnier referred to identifying what he called “red lines”. Barnier declared that if certain Member States clearly crossed “red lines”, the Commission would react in its role as “Guardian of the Treaties”.

At the time of print, almost 12 months since the Action Plan was first unveiled, not a great deal has happened. With Barnier's term set to expire in 2014, the clock is now ticking to see how soon infringement decisions will be issued. Recent unconfirmed reports suggest that the Commission is in the process of finalising its investigations and will issue infringement decisions “soon”. This echoes an indication by Harrie Temmink, Deputy Head of the Online and Postal Unit at DG Internal Market and Services at the Commission, in April 2013, that the Commission wants to issue simultaneous decisions on each country. Infringement proceedings are expected to be launched in the next few months or so, but this is likely to be followed by further glacial progress.

It remains to be seen what course of action will be taken against infringing Member States, if any, but what is clear is that Member States are likely to negotiate regulatory changes with the Commission to make their gambling laws minimally compliant.

Conclusion

Although the European online gambling market is the largest market worldwide, uncertain times lie ahead due to continued national segmentation and growing economic protectionism by Member States. Whilst it would make logical sense to harmonise the industry at an EU level, it is clear from the adopted report that there is very little political appetite to harmonise and that barriers to enter many Member States across Europe will be retained for the foreseeable future. For now, let us hope that Mr Barnier aspires to making a name for himself and launches much anticipated infringement proceedings before leaving office next year.



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